Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To: CC:PSI:B03 PLR-138923-10

Date:

March 03, 2011

<u>LEGEND</u>

Company =

State =

Date =

Shareholder =

Dear :

This letter responds to a letter dated September 9, 2010, and subsequent correspondence, submitted on behalf of <u>Company</u>, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code (Code).

Facts

<u>Company</u> incorporated under the laws of <u>State</u> on <u>Date</u>. <u>Company</u> originally intended to be a tax-exempt entity effective <u>Date</u>. After failing to complete the application to be a tax-exempt entity, <u>Company</u> decided to be an S corporation effective <u>Date</u>. However, <u>Company</u> did not timely file a Form 2553, Election by a Small Business Corporation. <u>Company's</u> sole <u>Shareholder</u> requests a ruling that <u>Company</u> will be recognized as an S corporation effective <u>Date</u>.

Law and Analysis

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) the election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third month of the following taxable year, then such election shall be treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

Conclusion

Based solely on the facts submitted and representations made, we conclude that <u>Company</u> has not established reasonable cause for failing to timely make an S corporation election. Thus, we conclude that <u>Company</u> is not eligible for relief under § 1362(b)(5).

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion as to whether <u>Company</u> is otherwise eligible to be an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Mary Beth Carchia Senior Technician Reviewer, Branch 3 Office of Associate Chief Counsel (Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes